

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PHILLIPE BARTHELUS,

Petitioner,

v.

AL KANDALL, et al.,

Respondents.

Civil Action No. 18-13527(MCA)

MEMORANDUM AND ORDER

This matter has been opened to the Court by Petitioner Phillipe Barthelus' letter requests to reopen this matter and his request to submit an amended petition. ECF Nos. 12-13. It appearing that:

On October 23, 2020, Petitioner filed a motion to stay this matter pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005). ECF No. 8. Petitioner filed that motion in response to the Court's Order requiring him to clarify whether all his grounds for relief were fully exhausted. ECF No. 7. The Court reviewed Petitioner's request for a stay and found there was good cause under *Rhines* to grant a stay.¹ On May 27, 2020, the Court stayed the matter and administratively terminated the case while Petitioner pursued his state court remedies. *See* ECF No. 11. The Court notified Petitioner that he must move to reopen this matter within 60 days of the completion of his state court proceedings if he wished to seek habeas relief. *See id.*

On January 7, 2023, Petitioner notified the Court that his state court proceedings had concluded, and he requested to reopen this matter. Petitioner also submitted a request to amend

¹ Petitioner apparently served his motion for a stay on the Attorney General, and it was referred to the Union County Prosecutor's Office, which did not file a response. *See* ECF Nos. 9-10. The Court treated the motion for a stay as unopposed.

his petition, along with a copy of his Amended Petition. *See* ECF Nos. 12-13. At this time, the Court grants Petitioner's request to reopen this matter and also grants his request to amend the Petition.

The Court has screened the Amended Petition ("Petition"), ECF No. 13-1, for summary dismissal pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and concluded that it does not "plainly appear[] from the petition and any attached exhibits that the petitioner is not entitled to relief"

IT IS THEREFORE, on this 17 day of January 2024,

ORDERED that Petitioner's request to reopen this matter (ECF No. 12) is GRANTED; and it is further

ORDERED that Petitioner's request to amend the Petition (ECF No. 13) is also GRANTED; and if it further

ORDERED that the Amended Petition (ECF No. 13-1) shall be filed; and it is further

ORDERED that the Clerk of the Court shall serve, pursuant to Rule 4 of the Habeas Rules, a Notice of Electronic Filing of this Order on the State of New Jersey, Department of Law & Public Safety, Division of Criminal Justice, Appellate Bureau ("the Bureau"), in accordance with the Memorandum of Understanding between this Court and the Bureau; and it is further

ORDERED, also in accordance with the Memorandum of Understanding, that if the Bureau intends to refer the action to a County Prosecutor's Office, the Bureau will use its best efforts to upload to CM/ECF a "referral letter" indicating the name of that office within fourteen (14) calendar days from the date of the Order to Answer; and it is further

ORDERED that, where the Petition appears to be untimely under the Antiterrorism and Effective Death Penalty Act of 1996, within forty-five (45) days of the date this Order is filed,

Respondents may file a Motion to Dismiss the Petition on timeliness grounds only, provided that the motion: (1) attaches exhibits that evince all relevant state court filing dates; (2) contains legal argument discussing pertinent timeliness law; and (3) demonstrates that an Answer to the merits of the Petition is unnecessary; and it is further

ORDERED that, if a Motion to Dismiss is filed, Petitioner shall have thirty (30) days to file an opposition brief, in which Petitioner may argue any bases for statutory and/or equitable tolling, and to which Petitioner may attach any relevant exhibits; and it is further

ORDERED that, if Petitioner files an opposition, Respondents shall have ten (10) days to file a reply brief; and it is further

ORDERED that, if the Motion to Dismiss is subsequently denied, the Court will then direct Respondents to file a full and complete answer to all claims; and it is further

ORDERED that if Respondents do not file a Motion to Dismiss the Petition, they shall file a full and complete answer to all claims asserted in the Petition within forty-five (45) days of the entry of this Order; and it is further

ORDERED that Respondents' answer shall respond to each factual and legal allegation of the Petition, in accordance with Habeas Rule 5(b); and it is further

ORDERED that Respondents' answer shall address the merits of each claim raised in the Petition by citing to relevant federal law; and it is further

ORDERED that, in addition to addressing the merits of each claim, Respondents shall raise by way of its answer any appropriate defenses which they wish to have the Court consider, including, but not limited to, exhaustion and procedural default, and also including, with respect to the asserted defenses, relevant legal arguments with citations to appropriate federal legal

authority; all non-jurisdictional affirmative defenses subject to waiver not raised in Respondents' answer or at the earliest practicable moment thereafter may be deemed waived; and it is further

ORDERED that Respondents' answer shall adhere to the requirements of Habeas Rule 5(c) and (d) in providing the relevant state court record of proceedings, including any pro se filings; and it is further

ORDERED that the answer shall contain an index of exhibits identifying each document from the relevant state court proceedings that is filed with the answer; and it is further

ORDERED that Respondents shall electronically file the answer, the exhibits, and the list of exhibits; and it is further

ORDERED that all exhibits to the Answer must be identified by a descriptive name in the electronic filing entry, for example:

"Exhibit #1 Transcript of [type of proceeding] held on XX/XX/XXXX" or

"Exhibit #2 Opinion entered on XX/XX/XXXX by Judge YYYY"; and it is further

ORDERED that Petitioner may file and serve a reply to the answer within forty-five (45) days after Respondents file the answer, see Habeas Rule 5(e); it is further

ORDERED that, within seven (7) days after any change in Petitioner's custody status, be it release or otherwise, Respondents shall electronically file a written notice of the same with the Clerk of the Court.

ORDERED that the Clerk of the Court shall send a copy of this Memorandum and Order to Petitioner at the address on file.



Madeline Cox Arleo, District Judge
United States District Court